

Decision 03-09-073

September 18, 2003

## BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Pacific Bell (U 1001 C), a Corporation, for Authority to Categorize Business Inside Wire Repair, Interexchange Carrier Directory Assistance, Operator Assistance Service and Inmate Call Control Service as Category III Services.

Application 98-02-017  
(Petition for Modification  
Filed June 11, 2001)

In the Matter of the Application of Pacific Bell (U 1001 C), a Corporation, for Authority to Categorize Residential Inside Wire Repair as a Category III Service.

Application 98-04-048  
(Petition for Modification  
Filed June 11, 2001)

**ORDER MODIFYING DECISION 02-12-062 AND DENYING  
REHEARING OF DECISION, AS MODIFIED**

**I. SUMMARY**

This order addresses an application for rehearing of Decision 02-12-062 (“the Decision”) filed by the Office of Ratepayer Advocates (ORA) and TURN. Some of the arguments set forth in the application have merit, and we will, consequently, correct and clarify certain points. These modifications to the Decision adequately address the applicants’ arguments, however, and we deny rehearing of the Decision, as modified.

## **II. THE DECISION’S RELIANCE ON FAILURE TO PROTEST ADVICE LETTERS**

TURN and ORA’s primary contention is that “to the extent D.02-12-062 relies on the absence of protests to Pacific’s residential WirePro Advice Letters, the decision is not supported by substantial evidence.” (App. Rhg., p. 8.) They argue that it is unreasonable to infer from their failure to protest those advice letters that they have conceded that the current rates are just and reasonable. They point out that the relief ORA sought by filing a petition to modify D.99-06-053 – recategorization of the residential WirePro service back to Category II, on the ground that the service is not fully competitive – is not available by protesting advice letters.

We agree that the relief ORA sought via its petition to modify – recategorization of residential WirePro and roll-back of the ceiling price – is not available by protesting advice letters. Given the limited effect of a protest to an advice letter raising rates of a Category III service, which is explained in the Decision, it would not be reasonable to infer from the absence of protests that ORA or TURN have conceded that the current rates, which are the result of successive increases, are just and reasonable. Nor did ORA and TURN waive their right to challenge the categorization or the reasonableness of current rates of WirePro by not protesting the advice letters. For these reasons, we agree that their failure to protest Pacific’s advice letter increases is not a proper basis for denying ORA’s petition. Accordingly, we will eliminate from the Decision those statements and the finding of fact that can be read as implying that this factor is a basis for the denial.

## **III. USE OF APPLICATION PROCEDURE FOR FUTURE CATEGORIZATION REQUESTS**

ORA and TURN also challenge our ruling that in the future, any party seeking recategorization of Pacific’s WirePro back to Category II must file an application. They read this very specific ruling as one that creates a special exemption for Pacific Bell from petitions for modification, and possibly other procedures, such as complaints. Such special treatment for Pacific, they contend, impairs the rights of interested persons to file a petition to modify

pursuant to Public Utilities Code section 1708.5, and to use other potential avenues of relief, thereby denying them the Equal Protection of the law.

Their argument is primarily in reaction to Conclusion of Law 3, which states:

The application process should be used for seeking a change in the categorization of Pacific's WirePro service option.

They point out that this "Conclusion of Law" is not supported by any citation to any law, or any explanation.

Their point is well taken. We should not have presented this ruling as a conclusion of law. Our intent was simply to inform the parties that they should use the application procedure for future requests to recategorize this service because we consider it the most appropriate procedural vehicle for such a request. ORA's petition to modify the 1999 categorization request was not procedurally improper, as we stated in the Decision, but the application procedure is better suited to developing the necessary record. This ruling is a discretionary procedural decision, not a legal conclusion, and it does not create any special exemption from our normal procedures for Pacific. We will delete Conclusion of Law 3.

#### **IV. CONCLUSION**

The changes discussed above adequately resolve the claims of error presented by ORA and TURN. Therefore,

**IT IS ORDERED** that:

1. Decision 02-12-062 shall be modified as follows:
  1. On page 12, first paragraph, delete the second sentence, which reads:

"ORA and TURN both had the opportunity to protest these advice letters and, for whatever reason, neither did so." and replace it with: "No protests were received."
  2. On page 13, delete the first paragraph, which reads in its entirety:

"Notwithstanding Pacific's ability to provide its RIWR WirePro service option above cost level, the parties still abandoned their opportunity to take advantage of the

Advice letter process in order to protest those rate changes which they allege are unjust and unreasonable.”

3. Delete Finding of Fact 13.
4. Delete Conclusion of Law 3.
5. Rehearing of Decision 02-12-062, as modified by this order, is denied.

This order is effective today.

Dated September 18, 2003, at San Francisco, California.

MICHAEL R. PEEVEY  
President  
GEOFFREY F. BROWN  
SUSAN P. KENNEDY  
Commissioners

I dissent.

/s/ LORETTA M. LYNCH  
Commissioner

I dissent.

/s/ CARL W. WOOD  
Commissioner